

### **REMARKS/ARGUMENTS**

The Applicants originally submitted Claims 1-23 in the application. In the present response, the Applicants have amended Claims 1, 11, and 21. Support for the amendment can be found, *e.g.*, in paragraphs [0019]-[0024] of the original specification. Claims 6 and 16 have been canceled without prejudice or disclaimer. Accordingly, Claims 1-5, 7-15, and 17-23 are currently pending in the application.

#### **I. Rejection of Claims 1-23 under 35 U.S.C. §112**

The Examiner has rejected Claims 1-23 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. More specifically, the Examiner asserts that the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The Examiner asserts that the recitation of the limitation “a real time calculation...that is unique to each data transfer” is not supported in the specification.

In response, the Applicants have amended Claims 1, 11, and 12 to remove the term “real-time calculation.” Paragraph [0084] of the original specification teaches that a time needed for a data transfer for each candidate network is determined, yielding a time needed for a data transfer for each candidate network. The determination is completed once for each candidate network (12, 13, and 14). Thus, the time needed for each data transfer to a candidate network is only performed once so the determined time needed for a data transfer is unique. As such, presently amended independent Claims 1, 11, and 12 now comply with the requirements of 35 U.S.C. §112, first paragraph.

Accordingly, the Applicants respectfully request the Examiner to withdraw the §112, first paragraph rejection of Claims 1-23 and allow issuance of the pending claims.

## **II. Rejection of Claims 1-23 under 35 U.S.C. §112**

The Examiner has rejected Claims 1-23 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. More specifically, the Examiner has stated that the term “real-time” recited in independent Claims 1, 11, and 21 is a relative term which renders the claim indefinite and that the term is not defined by the claim nor does the specification provide a standard for ascertaining the requisite degree. In response, the Applicants have amended independent Claims 1, 11, and 21 to remove this term and, as such, presently amended independent Claims 1, 11, and 21 now comply with the requirements of 35 U.S.C. §112, second paragraph. Accordingly, the Applicants respectfully request the Examiner to withdraw the §112, second paragraph rejection of Claims 1-23 and allow issuance of the pending claims.

## **III. Rejection of Claims 1-2, 5-6, 8-12, 15-16, and 18-23 under 35 U.S.C. §103**

The Examiner rejected Claims 1-2, 5-6, 8-12, 15-16, and 18-23 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0102978 by Yahagi (hereinafter “Yahagi”) in view of U.S. Patent No. 6,138,019 to Trompower, *et al.* (hereinafter “Trompower”) and U.S. Patent Application Publication No. 2004/0203959 by Coombes (hereinafter “Coombes”). The rejection of Claims 6 and 16, however, is now moot since, as noted above, these claims have been canceled without prejudice or disclaimer. With respect to Claims 1-2, 5, 8-12, 15,

and 18-23, the Applicants believe the invention as presently is neither shown nor suggested in the cited portions of the cited combination of Yahagi, Trompower, and Coombes. More specifically, the Applicants fail to find where the cited portions of the cited combination teach or suggest evaluating at least two candidate wireless networks based on a time needed for a data transfer between a mobile communication device and each candidate wireless network that is unique to each transfer, wherein the time needed is calculated from a difference between a start time when the data transfer is sent from the mobile communication device to a communication server associated with each of the candidate wireless networks and an end time when complete data is received by the communication server by the mobile communication device as recited in amended independent Claims 1, 11, and 21.

The Examiner recognizes that Yahagi does not explicitly teach the parameter is determined by a real-time calculation of a time needed for each data transfer that is unique to each data transfer and, citing lines 57-62 of column 22, lines 9-15 of column 23, and Fig. 12C, asserts that Trompower cures this deficiency of Yahagi. The Examiner asserts that Trompower teaches a host computer that calculates an average delay time that is calculated by computing  $t_{\text{delay}}$  associated with a particular teach packet base on each response packet and then sends another test packet, receives a response and repeats the cycle. (*See* Examiner's Action of January 23, 2009, pages 4, 8, and 11-12.) The cited portion of Trompower is directed to entry of a new base station into a communication system with a host processor.

One of the tasks for the newly entered base station 154 is to set its clock 179 to a universal clock provided by host computer 158. To accomplish this, the host computer 158 determines a time delay for transmission between host computer 158 and base station 154 and adds the time delay to its universal clock to generate timing for the base station clock 179 that is synchronized with the

universal clock of host computer 158. The universal clock time for the base station by taking into account the time delay is computed as follows:  $T_{univbase} = T_{univ} + T_{delay}$ , where  $T_{univ}$  is the universal clock time of the host computer,  $T_{delay}$  is the average time delay between the host computer and the newly entered base station, and  $T_{univbase}$  is the universal clock for the base station adjusted for the delay. The general procedure carried out by the host computer 158 and a base station 154 to determine  $T_{delay}$  generally involves the host computer 158 sending a plurality (e.g., 100) of separate packets to the base station 154 seeking to register, computing an average time which it takes for the base station to respond to the packets, and dividing by two. (See, e.g., lines 43-51 of column 18, lines 33-47 of column 21, lines 16-23 of column 22, and Figs. 12B and 12C of Trompower.) This is illustrated in Fig. 12C which appears to be what the Examiner relies on to teach the computation of the claimed time needed for a data transfer.

Claims 1, 11, and 21, however, have been amended to more clearly point how the claimed time needed for a data transfer is determined. Host computer 158 calculates  $T_{delay}$  as follows:

$$T_{delay} = (([receipt\ time] - [transmit\ time]) - ([base\ station\ transmit\ time] - [base\ station\ receipt\ time])) / 2$$

where  $[transmit\ time]$  is the universal clock time at which test packet  $i$  is transmitted to the base station,  $[receipt\ time]$  is universal clock time at which a response packet was received from the base station,  $[base\ station\ receipt\ time]$  is the time (based on base station clock 179) at which the base station 154 received the test packet  $i$ , and  $[base\ station\ transmit\ time]$  is the time (based again on base station clock 179) at which the base station 154 transmitted the response packet back to the host computer 158. (See, e.g., lines 33-35 and 58-61 of column 22, lines 6-14 of column 23, and Fig. 12C.) Thus, Trompower teaches  $T_{delay}$  is the difference between a time when a test packet was transmitted from a host computer  $[transmit\ time]$  to a base station and when a response packet was

received by the host computer from the base station [receive time] less the delay introduced by the base station from receiving the test packet from the host computer [base station receipt time] to sending the response packet back to the host computer [base station receipt time] all divided by two. As such, Trompower does not teach wherein the time needed for a data transfer is calculated from a difference between a start time when the data transfer is sent and an end time when complete data is received. Furthermore, Trompower doesn't suggest the same.

In the claimed invention, the time needed for a data transfer to each candidate wireless network is used to select which candidate wireless network is quickest to connect to. Here, the time the candidate wireless network takes to respond to the data transfer is important for the selection of a candidate network. For example, if just the transfer time to and from candidate network A is less than for candidate network B, but the amount of time candidate network A takes to send a response is much, much longer than the time candidate network B takes, the total round trip time for candidate network A is much longer than for candidate network B. Based on just the respective transit times, a user would select candidate network A, but based on total round trip time, the user would select candidate network B. The user in the claimed invention selects a candidate network based on the total round trip time. Trompower evaluates transit times between a host computer and base station and back to determine an offset for a universal clock for the base station which is why a delay introduced by the base station to send a response packet is ignored in Trompower. Thus, while the time introduced to send a response packet is important for the selection of a candidate network in the claimed invention, Trompower explicitly ignores this time introduced in order to properly calculate the offset time for the newly entered base station. Using the time introduced to send a response packet in Trompower would generate inaccurate time offsets for the universal clock for the newly

entered base station and, as such, would not allow for accurate timing for the frequency hopping taught in Trompower.

As such, there is no suggestion that one of ordinary skill in the art at the time of the invention would use the teachings of  $T_{delay}$  from Trompower. Therefore, Trompower does not teach or suggest wherein the time needed for a data transfer is calculated from a difference between a start time when the data transfer is sent and an end time when complete data is received and, Trompower does not cure the Examiner recognized deficiencies of Yahagi.

Coombes has not been cited to cure the above-noted deficiencies of the cited combination of Yahagi and Trompower but to teach that a calculation is performed by a mobile communication device. (See Examiner's Action of January 23, 2009, pages 4, 8, and 12.) As such, the cited combination of Yahagi, Trompower, and Coombes, as applied by the Examiner does not provide a *prima facie* case of obviousness for presently amended independent Claims 1, 11, and 21 and Claims that depend thereon. Accordingly, the Applicants respectfully request the Examiner to withdraw the §103(a) rejection of Claims 1-2, 5-6, 8-12, 15-16, and 18-23 and allow issuance of the pending claims.

#### **IV. Rejection of Claims 3-4, 7, 13-14, and 17 under 35 U.S.C. §103**

The Examiner rejected Claims 3-4, 7, 13-14, and 17 under 35 U.S.C. §103(a) as being unpatentable over Yahagi, Trompower, and Coombes as applied to claims 1, 2, 4, 6, 8-12, 15, 16 and 18-23 above and further in view of: U.S. Patent Application Publication No. 2002/0087674 by Guilford, *et al.* (hereinafter "Guilford") for Claims 3-4 and 13-14; and U.S. Patent Application Publication No. 2004/0009751 by Michaelis, *et al.* (hereinafter "Michaelis") for Claims 7 and 17.

As established above, the cited combination of Yahagi, Trompower, and Coombes, as applied by the Examiner, does not provide a *prima facie* case of obviousness for presently amended independent Claims 1, 11, and 21. Neither Guilford nor Michaelis has been cited to cure the above-noted deficiencies of the cited combination of Yahagi, Trompower, and Coombes but to teach the subject matter of the above-mentioned dependent claims. As such, Yahagi, Trompower, and Coombes combined with either Guilford or Michaelis, as applied by the Examiner, does not provide a *prima facie* case of obviousness for presently amended independent Claims 1, 11, and 21 and Claims that depend thereon. Accordingly, the Applicants respectfully request the Examiner to withdraw the §103(a) rejection of Claims 3-4, 7, 13-14, and 17 and allow issuance thereof.

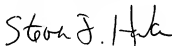
**V. Conclusion**

In view of the foregoing amendment and remarks, the Applicants now see all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1-5, 7-15, and 17-23.

The Applicants request the Examiner to telephone the undersigned agent of record at (972) 480-8800 if such would further or expedite the prosecution of the present application. The Commissioner is hereby authorized to charge any fees, credits or overpayments to Deposit Account 08-2395.

Respectfully submitted,

**HITT GAINES, PC**



Steven J. Hanke  
Registration No. 58,076

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P.O. Box 832570  
Richardson, Texas 75083  
(972) 480-8800